



ZFW

Atty. Dkt. No. 040302-0383

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Keisuke WAKABAYASHI

Title: FUEL CELL SYSTEM

Appl. No.: 10/780,767

Filing Date: 2/19/2004

Examiner: John S. MAPLES

Art Unit: 1745

Confirmation Number: 2070

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the election of species requirement set forth in the Office Action mailed November 06, 2006, Applicant hereby provisionally elects Embodiment I, for examination, with traverse. The claims that are encompassed by the elected species are claims 1-2 and 4-10.

The PTO has required an election between claim 2 (Embodiment I) in which the circulating flow path is a flow path through which coolant water is circulated and claim 3 (Embodiment II) in which the circulating flow path is a flow path through which pure water is circulated. Applicant respectfully traverses the election of species requirement.

MPEP § 806.04 states “[w]here an application includes claims directed to different embodiments or species that could fall within the scope of a generic claim, restriction between the species may be proper if the species are independent or distinct.” However, MPEP § 808.02 states “[w]here the related inventions as claimed are shown to be independent or distinct...the examiner, in order to establish reasons for insisting upon

restriction, must explain why there would be a serious burden on the examiner if restriction is not required.” Additionally, MPEP § 808.02 further states: “[w]here...the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among independent or related inventions.”

In this case, both species of the invention are drawn to a fuel cell system comprising a fuel cell, a circulating pump, an ion exchange resin filter, an electric conductivity meter, and a circulating flow path. Both species also include judging whether replacement of the ion exchange resin filter is needed on the basis of the result of comparison between a predetermined reference electric conductivity and the electric conductivity of water circulating in the circulating flow path as measured by the electric conductivity meter, a predetermined time after a start of water circulation. Such judging, for example, can be used to determine when an ion exchanger resin filter needs replacement in advance of the elevation of the electric conductivity of water used in the fuel cell system and prevent the fuel cell thereof from being degraded or damaged. No assertion has been made by the PTO that the classification of both species is not the same or the field of search is not the same. Thus, there are insufficient reasons for insisting on an election or restriction in this case. Therefore, examination of all the claims is respectfully requested.

Applicant, of course, reserve the right to file a divisional application covering the non-elected subject matter and/or to receive consideration of claims to additional species as provided by 37 C.F.R. §1.141 and M.P.E.P. §821.04 (rejoinder).

Receipt of the initial Office Action on the merits is awaited.

Respectfully submitted,

Date December 6, 2006

By 

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5414
Facsimile: (202) 672-5399

Richard L. Schwaab
Attorney for Applicant
Registration No. 25,479